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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,042	07/14/2003	Frank J. Maconachy	3861P2593	6064
23504	7590	04/04/2006	EXAMINER	
WEISS & MOY PC 4204 NORTH BROWN AVENUE SCOTTSDALE, AZ 85251			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 04/04/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/619,042

Applicant(s)

MACONACHY, FRANK J.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 11 is objected to because of the following informalities: on line 5, "producing" should be – produce -. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-12, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maconachy (6,997,194) in view of Oseguera (6,974,017)(using prior art as evidentiary art).

Maconachy discloses a process of washing vegetables using a self-propelled harvester, which has a conveyor belt, a washing station and sideward and downward sprayer, and a housing over the conveyor (fig. 2 (24) and abstract). Claims 10 and 17 differ from the reference in the use of a spray nozzle, which is level with the product as in the second group, and in nozzles that spray down and toward the center. However, it is seen that it would have been within the skill of the ordinary worker to position the nozzles to spray as required particularly as the reference discloses spraying from the side and top. Certainly, it would have been desirable to spray to the center, instead of outwardly so that water would not have been wasted. Also, Oseguera discloses that it was known to chemically spray agricultural products on a conveyor belt when they go

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past nozzles (col. 1, lines 27-45). Therefore, it would have been obvious to position nozzles to spray in whatever direction is required to efficiently wash the produce.

Claim 11 further requires inspecting the produce. Certainly, nothing new is seen in inspecting produce as one knows that the consumer does not purchase defective produce. Therefore, it would have been obvious to inspect the produce at any point.

Claim 12 further requires that the housing have a stainless steel surface. However, stainless steel is a well-known material used in food service, and nothing new is seen in its use. Therefore, it would have been obvious to use stainless steel in the claimed process for its known function of providing a clean sanitary surface.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leemkuil et al. (4,798,275) as applied to the above claims, and further in view of Leemkuil et al.

Claim 13 further requires a diverter at the center of the conveyer to divert produce into various paths, which should be stainless steel as in claim 14. Leemkuil et al. disclose that it is known to use a diverter to direct boxes (col. 7, lines 55-65). Nothing new is seen in using a food safe material for the diverter in a food setting. Therefore, it would have been obvious to use a known apparatus to divert other materials as it is used for its known function and to use a known food safe material like stainless steel.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to the above claims, and further in view of Traeder et al. (2002/0094363).

Claim 15 further requires that the produce be sprayed with a microbe using the nozzles of the process. Traeder et al. disclose that it is known to spray food with a sanitizing liquid (0033, 0029-0034). Nothing new is seen in providing a tank to contain the microbicide as some type of container must be provided. Therefore, it would have been obvious to spray a microbicide onto produce using the process of Traeder et al. in the process of Maconachy.

Claims 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to the above claims, and further in view of Wolfe et al. (2005/02330390).

Claim 16 further requires providing a tank having a protein in it, which is sprayed through the nozzles. Wolfe et al. disclose that it is known to core vegetables and then spray with protein (abstract and page 4, 0036, line 6, 0037). Therefore, it would have been obvious to spray with protein, in the process of the combined references.

Claim 18 further requires positioning the cored produce as claimed. However, nothing new is seen in positioning the cored produce so that it can be treated by spraying, which is seen as being within the skill of the ordinary worker. Therefore, it would have been obvious to position the produce so that it could be sprayed in the process of the combined references.

Election/Restrictions

Applicant's election without traverse of Group II in the reply filed on 3-17-06 is acknowledged.

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A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

3-31-06


HELEN PRATT
PRIMARY EXAMINER